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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,163	09/08/2003	Byron G. Barefoot	06600001CIP1	1321
7055	7590	05/03/2005	EXAMINER	
GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191			FULTON, CHRISTOPHER W	
			ART UNIT	PAPER NUMBER

2859

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SM

**Office Action Summary**

Application No.

10/656,163

Applicant(s)

BAREFOOT, BYRON G.

Examiner

Christopher W. Fulton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 February 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16, 17 and 22-24 is/are allowed.
- 6) ☒ Claim(s) 1-14, 18-21 and 25-27 is/are rejected.
- 7) ☒ Claim(s) 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                         |                                                                             |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413).                    |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                                |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____                                                             | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-14, 18-21, and 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilber ('385).

Wilber discloses a tool, as shown in Fig. 3, having:

a plate 21 having a surface and a plurality of edges;

at least one fixed measurement structure 23 integrated with an edge of the plurality of edges of the plate 21;

the at least one fixed measurement structure 23 including: a recessed portion and at least one projection 51-55 extending upward and away from the sidewall within the recessed portion forming at least one fixed variation measurement structure;

wherein the at least one fixed variation measurement structure 23 is provided between a sidewall of the projection 51-55 (four projections as in claim 14 or six projections as in claim 18) and an opposing sidewall formed from the recessed portion;

wherein the at least one fixed variation measurement structure 23 includes a first measurement indicia measuring a distance from an edge of the recessed portion to a farthest edge of the at least one projection 51-55;

wherein the at least one projection 51-55 is offset from center within the recessed

portion;

wherein the measurement indicia, a first of the two measurement indicia measuring a distance from a first edge of the recessed portion to a farthest edge from the first edge of the at least one fixed variation measurement structure 23 includes two at least one projection 51-55 and a second of the two measurement indicia measuring a distance from a second edge of the recessed portion to a farthest edge from the second edge of the at least one projection 51-55;

a downslope measuring distance structure; and

wherein the downslope measuring distance structure includes a measurement indicia from an edge of the recessed portion to a portion on the plate 21;

wherein the at least one projection 51-55 is positioned at least at one sidewall of the recessed portion;

wherein the at least one projection 51-55 forming the at least one variation measurement structure is two projections, each positioned at sidewalls of the recessed portion;

wherein the at least one projection 51-55 forms a stepped portion at the one sidewall;

wherein the at least one projection 51-55 provides a narrow recess closer to a bottom portion of the recessed portion with respect to a portion above the at least one projection 51-55 within the recessed portion;

wherein the at least one projection 51-55 and recessed portion measures maximum and minimum allowable material thickness of a specific thickness of the material;

wherein the at least one projection 51-55 is at least two projections spaced apart from one another within the recessed portion, wherein one of the two projections is formed at the sidewall of the recessed portion and the at least two projections form two variation measurement structures;

wherein the recessed portion is a stepped configuration forming at least two stepped portions;

wherein the recessed portion is a stepped configuration forming a portion lower than remaining portions of the recessed portion;

wherein the at least one fixed measurement structure 23 measures at least allowable material thickness variation.

#### Allowable Subject Matter

3. Claims 16, 17, and 22-24 are allowed.
4. Claim 15 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### *Response to Arguments*

5. Applicant's arguments filed February 7, 2005 have been fully considered but they are not persuasive. The argument with respect to the reference to the interview summary because the single plate and at least one projection "spaced" away from the sidewall is not claimed. The

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Wilber reference discloses projections that face away from the sidewalls which read on the claims as presented. With respect to method claim 22 this argument is persuasive. With respect to the arguments concerning downslope, fixed variation, and a projection providing a narrow recess, these are not persuasive since structurally the Wilber reference meets these limitations and variations on the physical dimensions of the Wilber reference is not generally considered a patentably distinct feature. With respect to claim 25 the structure is met by Wilber as cited above and additionally the alternative downslope indicia would have been obvious modification of Wilber since Wilber shows indicia on the gauge to measure a specific characteristic.

### *Conclusion*

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

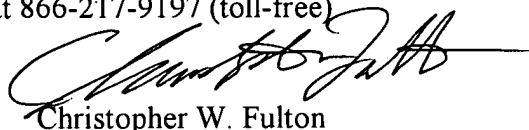
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher W. Fulton whose telephone number is (571) 272-2242. The examiner can normally be reached on M-Th 5:30-3:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free)



Christopher W. Fulton  
Primary Examiner  
Art Unit 2859

CWF